



ROCKY MOUNTAIN CORPORATION FOR PUBLIC BROADCASTING

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August 22, 2005

Ms. Marlene Dortch.
The Secretary
FCC
Washington DC 20554

Re: Docket 99-25 FNPRM

INFORMAL COMMENT ON THE PROPOSED
REVISIONS TO LPFM RULES

1. The Rocky Mountain Corporation for Public Broadcasting (RMCPB) respectfully files informal and timely comment on the **Further Notice of Proposed Rule Making**, Docket 99-25, March 17, 2005 (the FNPRM).

2. RMCPB is a membership organization of public broadcasting stations and entities in the Rocky Mountain states.

Its purpose is to enhance development and operation of public broadcasting in the Rocky Mountain Region—**and increasingly to protect and ensure its service to our isolated rural communities and areas.**

3. We are therefore deeply concerned about the **FNPRM-proposed revisions to LPFM rules** and their all too predictable **impact on our public radio stations, their translator systems and the public they serve.**

4. Since 1968 RMCPB has assisted Public Radio stations in the Rocky Mountain states in obtaining FCC authorization, as well as PTFP funding assistance, for stations, translators and interconnection facilities **to extend service to the unserved and maintain existing service in our vast and thinly populated region.**

Citizens in remote, rural and isolated areas enjoy the free commercial and noncommercial broadcast services they need, and deserve, because the Commission wisely authorized

translators to meet the **special geographic, topographic and demographic challenges of this region.**

Translators were then clearly the **appropriate technology for extending broadcast service efficiently and cost-effectively.**

No one foresaw a future when they would become the **dangerously endangered species** they are today!

We face a **continuing crisis in *universal access to free broadcasting service in isolated rural communities and areas.***

- Rural Americans, like all other Americans, are **entitled the benefits of free broadcast services.**
- Rural broadcast access is primarily by **translator.**
- Translators are the "**Mexican spotted owls**" of broadcasting.
- Replacement frequencies too are **an endangered and nonrenewable resource.**

A secondary service, translators are **vulnerable to predatory station applications** proposing overlapping coverage, and **must cease operation** when station approved and on air. The vultures are circling--ready to pick the bones of PR translators already under siege.

Given the current tide of NCE-FM applications--**by noncommercial, but non-public, radio entities**--there can be no reasonable doubt of **the danger that *our rural communities and their neighbors will lose broadcast service.***

Nor that *the loss*--to public radio listeners in these communities, to our public radio stations, to public radio in our states and to public radio and public broadcasting in the larger sense--**is unacceptable**, given current national policy trends, Congress's directive to CPB and CPB's reallocation of funds to enhance rural service.

This is not the time for an added burden imposed from Washington!

But comes now the FNPRM!

It is more than slightly ironic the agency **created expressly to prevent interference** among broadcast stations now seeks **to invite, encourage and ultimately authorize interference with FM stations and translators.**

5. In essence, this FNPRM

- questions the extent to which LPFM stations **must protect full power stations and translators,**

- **proposes primacy for LPFM stations over FM stations and translators, and**
- **itches revisions allowing LPFM applicants or licensees to interfere with, limit, and even displace existing authorized translator service.**

6. That dog can't be allowed to hunt!

Translators are utterly essential components of our public radio systems, and localized public radio service to our rural areas and communities cannot otherwise be cost-effectively provided.

Ours is a land of both **distances** and **mountains**. From where you are, it's nearly always a "far piece" to somewhere else. And when you get there, there may not be much "there" there.

Our mountains are both **boon and curse to broadcasters**. They give you **marvelous transmitter sites** for stations and translators alike, but they are equally good at **blocking signals** away from the people you seek to serve.

For example, **Albuquerque public radio stations KANW-FM (Albuquerque Public Schools) and KUNM-FM (University of New Mexico)** benefit from transmitters on Sandia Crest (**America's highest above average terrain full-power transmission site**). In a *virtual world--flat and uncluttered with topographical anomalies*, theoretical coverage would serve some 2/3 of a million New Mexicans.

But in the real world of New Mexico, it encompasses peaks and canyons, hills and valleys--the Sangre de Cristos, the Jemez, Manzanos and Ladrones ranges, Wheeler Peak (at 13,161 feet above sea level) Mt. Taylor (Tsodzi, sacred mountain of the Navajos at 11,301 feet), Picuris (depriving half of Taos of the Crest signal), M and No-Name mountains--and the Rio Grande Rift.

The net effect of topography and distances is to so shadow 25% of those citizens theoretically "served" from the Crest that they are unserved—except for station translators. And there are still isolated communities and rural areas **beyond primary coverage again served only by translators.**

Similarly, **Eastern New Mexico University**, with its **Portales public radio station KENW-FM and Maljamar sister station KMTH-FM**, serves all the high plains *Llano Estacado* country of Eastside New Mexico from Texas west to the central mountains, and from Texas to the south to Colorado to the north with **16 translators**.

Only 2 of KENW's 12 (Ft. Sumner and Quay) receive its signal off-air, while 10 are daisy-chained (directly and indirectly) from the *Quay* translator. *Tucumcari* receives the *Quay* signal, and is in turn is received by *Montoya* and *Wagon Mound*. *Conchas* receives *Montoya*.

Wagon Mound is received by *Las Vegas, Roy, Raton* and *Des Moines*. *Las Vegas* is received by *Apache Springs*, and *Des Moines* by *Clayton*.

3 of KMTH's translators are served off-air (*Ruidoso* and *Roswell NM*, and *Andrews TX*) while *Midland TX* is **daisy-chained** from *Andrews*.

The Texas translators were persistently **sought by their otherwise unserved communities, and the local share of costs funded by them.**

Should the **Quay translator** fall prey to an **encroaching authorized LPFM**, KENW service would be killed **at 9 more translators, and listeners in most of the northeast quadrant of New Mexico deprived of public radio service they are accustomed to.**

Obviously the Midland translator, and the people it serves, would be **equally vulnerable** to encroachment at Andrews.

KRWG-FM Las Cruces (New Mexico State University) serves all of Southwestern New Mexico with **off-air** translators for *Lordsburg, Silver City, Deming, Alamogordo* and *Caballo (Truth or Consequences)*, and plans another for *Cliff-Gila* (**daisy-chained** from the *Silver City* site).

And so it is in each of our states. **KNPR, Las Vegas NV**, has **5 rural translators and one metro, and serves 3 it does not own**, as well as **3 repeater stations**. Each is "sole source" for Nevada Public Radio's **NPR News and classical music service**. **Utah's 3 full service public radio stations** cover virtually the entire state by translators. In our other states, **isolated rural areas and communities would have no access to public radio were it not for the translator systems.**

Virtually all were paid for by **federal PTFP grants** and local **match** from **legislative and local community funding.**

7. **What remedy** then for our stations were LPFM applicants and licensees permitted to **poach on their translator systems?**

Karen Holp, G. M. of the **University of Oklahoma's KGOU-FM, Norman OK**, asks:

"Is there any way for the displaced translator to be first in line for restoration if the LPFM operator goes dark? **Is there a way to say that the LPFM has to notify the FCC** about their dark periods just like everyone else, so if they remain dark longer, or have a less than minimum operating schedule, they have to give up their license immediately?"

"Mod" to another frequency may well not be feasible-- given the flood of applications by "the usual suspects" and of CP's granted them, to say nothing of hundreds of CP's and licenses already held.

In any case, **replacement would unnecessarily burden** underfunded public radio stations **with the expense** involved. KNPR estimates \$5000 or more for the engineering study and FCC filing and asks **who would pay for a “mod”**. **Would PTFP assist** with a grant? Or, for that matter, **could** they—since it would no longer be possible to ensure the **Federal interest** as required?

8. As we understand it, the FNPRM proposes revising current rules, **which essentially treat LPFM and FM translator stations as co-equal facilities, to change that balance in favor of LPFM service.**

High school and college debaters learn early on they must demonstrate an overwhelming necessity to warrant drastic change.

Yet the FNPRM cites only **one** LPFM station forced off the air under current procedures. One? **Only one?** Folk wisdom has long held that **one swallow does not a spring make**. And we submit that **one of whatever is hardly a crisis--no matter how many hysterical Chicken Littles run around squawking their heads off.**

9. Absent **demonstrated and compelling need for revision**, the question of its **desirability** is **essentially moot.**

But the issue of its **undesirability** in its impact on public radio translators and public radio service is **far from moot.**

The proposed revisions would **jeopardize, inhibit—and even displace--the** demonstrably **successful, efficient and cost-effective service of our public radio translator systems.**

10. **Loss of the translator service** they now enjoy would not only deprive our rural listeners of access to informational, educational and cultural opportunities routinely available to their urban cohorts, but also—critically—**of the EAS service our stations’ translators provide.**

Given the Commission practice of routinely fining stations that do not acquire, install and maintain EAS facilities, it would seem dramatically inconsistent to wink an eye at destruction of this “last mile” capability.

11. There is yet another elephant in this living room. **Public radio audiences are not casual listeners.** They are *fans*—virtually *addicts*. They are also the very people in every community **most likely to vote** and to **phone or Email** their Representatives and Senators when they are offended. Earlier this year, Hill offices were deluged with calls, faxes and Emails when public broadcasting fans were outraged by House slashes in appropriations.

And the day their favorite station doesn’t sound right or can’t be heard, **or their translator shuts down, and they learn it’s because the FCC favored an LPFM applicant** over the station or translator they’re used to, **they will be offended.** The Hill will not enjoy the outcry. **Nor** will the Commission the Congressional outrage.

12. But all else aside, **the real bottom line issue** is this simple, and obvious, question:

Is it in the public interest
---and hence sound public policy---
to jeopardize and inhibit—let alone displace---
the demonstrably successful, efficient and cost-effective service
of our public radio translator systems?

13. Within the context of that overriding issue, and mindful of the concerns of our public radio station members, RMCPB submits the following responses to, and comments on, the specific questions (in re translators) posed by the FNPRM.

- *“What licensing rule changes should the Commission adopt...”*

NONE. Absent demonstrated overwhelming necessity for change, common sense wisdom should prevail: **“If it ain’t broke...” It ain’t!**

- *Whether and, if so, under what conditions should LPFM applications be treated as having "primary" status to prior-filed FM translator applications and authorized FM translator stations.*

NO. And **NEVER** over bonafide Public Radio station applicants and licensees.

- *“Should all LPFM applications have primary status because LPFM stations are permitted to originate local programming?”*

NO. For the simple reason that not all “local programming” is created equal. It can range from wonderful to terrible and from excellent to lousy. It depends on who does it, and to what purpose. To be **“local” is not enough in itself**. It is the **“programming” that matters**, and **the issue is whether or not its “local service” is truly of interest and value to its community**.

- *“Should primary status be limited to LPFM applicants that pledge to originate locally at least eight hours of programming per day?”*

NO. The “limited” concept has merit, but the limit proposed is absurdly low. Our public radio stations and **translators are full-time operations**, and the limit should be **“at least as many hours of programming per day per week per year as the facility to be relegated to secondary status.”**

KGOU's Karen Holp suggests:

“Perhaps **length of daily service** is a way to help decide between applicants: which one has the longest hours of planned service??? **Public radio translators would be able to compete fairly** that way. And **it is not proper for someone to get an LPFM license for a service**, even if it is local, **that is sporadic, does not respect how people use radio, and isn't using the spectrum space a majority of the time.**”

Even with a limit, there's the “pledge” problem: A *pledge* is only a *promise*. And there's the rub, as Karen points out:

“The thing I just can't get past is the suggestion that a LPFM operator "promise" to do at least 8 hours of local programming per day would allow them to take priority is sufficient. **What if they break their promise** -- one would have to wait the entire license period in order to object to their operation. That is **too long for a station's translator to be off the air**, waiting for the LPFM operator to get caught or give up because of loss of interest...”

She then suggests other requirement indices for qualification:

“...criteria for an LPFM operator...should include **financial disclosures, a financial plan**, etc... as well as **opportunity to check them on their performance every year.**”

Which in turn suggests a guiding principle RMCPB would heartily endorse:

Eligibility for “primary status” should be limited to LPFM applicants meeting the same standards and fulfilling the same requirements translator applicants must.

- “*Should the Commission provide "grandfathered" protection rights to certain classes of FM translators?*”

“Possible class designations include currently licensed and operating stations; stations licensed prior to the adoption of the original LPFM Report and Order; currently authorized translator stations, including the construction permits issued to the 2003 window filers; and/or "fill-in" FM translators but not "other area" translator stations.”

CERTAINLY. And ***including "other area" translator stations.***”

- *Should the Commission dismiss all pending applications for new FM translator stations and make potential refilings subject to the resolution of the licensing issues raised in this proceeding?*

NO. Unfair to applicants who filed in good faith. Pending applications should be processed under rules in effect when filed.

Should the Commission dismiss the pending mutually exclusive FM translator applications?

NO. For the same reason.

14. In sum, RMCPB finds the FNPRM **unreasonably one-sided** in its intent to tilt the present balance of co-equal facilities to favor LPFM service at the expense of FM translator service. If adopted in toto as proposed, the Commission risks looking remarkably like a butcher putting his thumb on the scale while he weighs your hamburger.

Proposed revisions are **consistently unilateral**. Unfortunately, there is no reciprocity, no sign of the non-discriminatory treatment co-equals warrant. Without, bilateral equal opportunity to file under some provisions, unrecognized potential public benefit is forever negated.

For example, if “local origination” is the *sine qua non*, the public interest might arguably be better served by also **allowing translators limited local origination** (repeatedly fruitlessly sought by RMCPB in the ‘80’s). The **benefits of full-service public radio station service** via its translators could then be **augmented by important local information**.

Similarly translators might usefully be allowed to file **to displace underachieving LPFM Stations** to the benefit of the public potentially served by extension of public radio service.

15. Because **drastic change**—particularly in revision of government regulations—is a high risk endeavor, RMCPB concurs with the former Governor of New Mexico who warned of the dangers of “**opening a whole box of Pandoras**”.

And we subscribe to the folk wisdom conclusion that **when you open a can of worms, you can’t put the lid back on**.

Further, we endorse Hippocrates’ stern dictum to “**First, do no harm!**”, and suggest it needs be the **prime directive** whenever sweeping change is proposed—**most certainly for major regulatory revision**.

And we recommend applying columnist and management consultant Dale Dauten’s final tests before deciding on change: Not only “**Does this make sense?**”, but equally importantly, “**Does it sound right? FEEL RIGHT?**”.

16. RMCPB concludes:

- Neither the Commission nor our public radio system needs the distraction and risk of opening the “box of Pandoras” or the “can of worms”.
- It is **vital to public radio** that the Commission, however eager for change, “**do no harm**” to the public radio system.
- The **proposed revisions** of the LPFM rules simply **do not make sense**.
- They neither **sound right** nor **feel right** because they are **simply wrong**.
- In sum:

It is not in the public interest

nor is it sound public policy

to jeopardize and inhibit—let alone displace---

the demonstrably successful, efficient and cost-effective service

of our public radio translator systems!

17. In sum, for these and other reasons, **RMCPB emphatically opposes adoption of the FNPRM and its proposed revisions of the LPFM rules.**

Respectfully submitted,

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WESTERN STATES PUBLIC RADIO

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